

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

MACSTEEL INTERNATIONAL CORP.

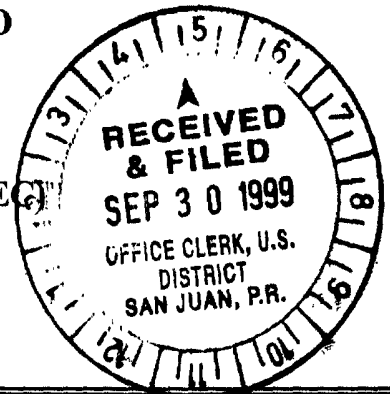
Plaintiff

v.

NAVIERAS NPR, INC., et al.

Defendants

Civil No. 98-1746(SEG)
In Admiralty



ORDER

MOTION

RULING

Docket # 6

M/V "Cidade de Funchal"'s "Motion to Quash"

The M/V "Cidade de Funchal" is a cargo vessel. In the caption of both the original and first amended complaints, plaintiff claims that its action against the M/V "Cidade de Funchal" is in rem. Moreover, in both the original and first amended complaints plaintiff identifies the M/V "Cidade de Funchal" as a defendant. In order to proceed in rem against a vessel, a plaintiff must allege that he or she possesses a maritime lien or is otherwise authorized by a statute of the United States to proceed in rem or in an analogous proceeding. Supplemental Rule C(1). Moreover, "[i]n actions in rem the complaint shall be verified on oath or solemn affirmation." *Id.* (2) Finally, "if the conditions for an action in rem appear to exist, an order so stating and authorizing a warrant for the arrest of the vessel or other property that is the subject of the action shall issue and be delivered to the clerk of the court who shall prepare the warrant." *Id.* (3). In this case, plaintiff has failed to comply with the foregoing provisions of Supplemental Rule C, as well as with Local Admiralty Rule (c). Alternatively, even assuming, *arguendo*, that plaintiff intended to initiate a procedure of attachment and garnishment under Supplemental Rule B and Local Admiralty Rule (b), plaintiff failed also to comply with these rules. Accordingly, the M/V "Cidade de Funchal"'s motion to quash the summons in this case should be, and is hereby, **GRANTED**.

Docket # 8

Navieras NPR, INC.'s "Motion to Dismiss Pursuant to Rule 12(b)"

The Court will hold defendant's motion to dismiss in abeyance until October 15, 1999, pending plaintiff's opposition. Should plaintiff file its opposition, the Court will treat defendant's motion to dismiss as a motion for summary judgment, pursuant to Fed. R. Civ. P. 12(c).

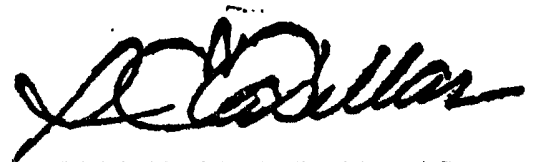
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MOTION	RULING
Docket # 10 Plaintiff's "Motion to Convert Motion to Dismiss to Motion for Summary Judgment and Requesting Extension"	MOOT.
Docket # 12 Plaintiff's "Motion for Brief Extension of Time to File Response to Motion to Quash"	MOOT.
Docket # 14 "Motion Under Rule 56(f) Requesting Stay of Consideration of Motion to Dismiss"	Regarding plaintiff's request for "stay of consideration of motion to dismiss," see the ruling as to Docket # 8.
Docket # 15 Plaintiff's "Motion for Leave to File Second Amended Complaint"	As it is unopposed, plaintiff's motion for leave to file is hereby GRANTED.
Docket # 17 M/V "Cidade de Funchal"'s "Motion for Leave to File Tendered Reply"	MOOT.

DATE: September 30, 1999.



SALVADOR E. CASELLAS
United States District Judge

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